

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LANE KELLY WHITTENBERG,

Plaintiff,

v.

JOSE TOVAR AYALA, *et al.*,

Defendants.

1:22-cv-00197-JLT-EPG (PC)

ORDER GRANTING IN PART PLAINTIFF'S
MOTION FOR EXTENSION OF TIME
TO FILE MOTION FOR THE ATTENDANCE
OF INCARCERATED WITNESSES

(ECF No. 44)

Plaintiff Lane Whittenberg, is presently an inmate confined at U.S. Penitentiary Florence, P.O. Box 7000, Florence, Colorado, in the custody of the Warden of the Federal Bureau of Prisons. On February 23, 2024, Plaintiff filed a motion (ECF No. 44), requesting that the Court extend the time for him to file his motion for the attendance of incarcerated witness, or in the alternative that the court issue a writ of habeas corpus ad testificandum for himself. (*Id.* at 1). Plaintiff does not expect to require the attendance of any other incarcerated witness at trial other than himself. (*Id.* at 2). Plaintiff is also expected to be released from prison before his trial. (*Id.* at 3). Plaintiff states that the deadline for filing this motion was February 23, 2024, based on this Court's scheduling order, ECF No. 20, issued on July 22, 2022. (*Id.* at 1, 3). Defendants did not oppose the motion.

The Court was not able to locate this deadline in either its July 22, 2022 Scheduling Order (ECF No. 20), or the earlier or subsequent scheduling orders.

Further, while Plaintiff does not have an absolute right to attend trial, it is the general practice of courts in the Eastern District of California to permit prisoners to personally attend trial in their civil rights cases. *See Navarro v. Herndon*, No. 2:09-CV-1878 KJM KJN, 2015 WL 2128601, at *3 (E.D. Cal. May 6, 2015). The Court usually enters a writ of habeas corpus ad testificandum about a month prior to trial without the need for Plaintiff to file a motion on his own behalf. *See, e.g.*, Order and Writ of Habeas Corpus Ad Testificandum to Transport Plaintiff for Trial, ECF No. 116, *Bush v. Santoro, et al.*, No. 1:20-cv-00015-JLT-EPG (PC) (E.D. Cal. Jan. 12, 2024); Order and Writ of Habeas Corpus Ad Testificandum to Transport Plaintiff for Trial, ECF No. 129, *Hammler v. Gooch, et al.*, No. 19-cv-00653-JLT-EPG (E.D. Cal. Feb. 2, 2024). The Court does not normally issue writs further in advance than four to six weeks before the trial because incarcerated plaintiffs or witnesses may be transferred or released from custody, as Plaintiff in this case expects to be. Since the jury trial in this case is set for more than a year from now, June 10, 2025, a motion for Plaintiff's attendance at this time is premature.

However, the Court appreciates that because Plaintiff is incarcerated out of state and is in federal custody, in this instance, a writ may involve more steps than normal. Accordingly, no later than 30 days prior to the pretrial conference (currently set for April 14, 2025), Plaintiff shall file a motion for a writ of habeas corpus ad testificandum for Plaintiff's attendance at trial, to the extent it is needed. If the pretrial conference and trial were to be rescheduled, so would this deadline. Plaintiff is welcome to file earlier if Plaintiff's counsel believes more time would be necessary to obtain the written approval from the Federal Bureau of Prisons for transport.

Accordingly, Plaintiff's motion is GRANTED IN PART. No later than 30 days before the pretrial conference, Plaintiff shall file a motion for a writ of habeas corpus ad testificandum for Plaintiff's attendance at trial, to the extent it is needed.
IT IS SO ORDERED.

Dated: April 3, 2024

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE